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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[26 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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SRI LANKA MUST PROVIDE A DEFINITIVE TIMELINE FOR IMPLEMENTATION OF RESOLUTION 30/1

Human Rights Council resolution 30/1 on "Promoting reconciliation, accountability and human rights in Sri Lanka", adopted on 1 October 2015, sets out concrete commitments to ensuring truth, justice, reparation and non-recurrence for human rights violations and abuses which took place in Sri Lanka. Council resolution 34/1, adopted on March 2017, further requested the Government of Sri Lanka "to implement fully the measures identified by the Council in its resolution 30/1 that are outstanding". In this written statement, Amnesty International provides an assessment of Sri Lanka's progress in delivering on its human rights obligations and implementing resolution 30/1, including through commitments made at its UPR in November 2017.

Sri Lanka has taken a number of important steps since the adoption of Resolution 30/1, including the ratification in June 2016 of the International Convention for the Protection of All Persons from Enforced Disappearance, the establishment of a Consultative Task Force on reconciliation (CTF) and resultant public consultations and the release of its report, and the passage of the amended Office on Missing Persons Act in June 2017.

However, two and a half years after the adoption of resolution 30/1, Amnesty International is disappointed by the lack of further progress, and in some cases backsliding, on the important commitments made in resolution 30/1 with regard to enforced disappearances; truth, justice and reparation; protection of religious and ethnic minorities and human rights defenders; and the repeal of the Prevention of Terrorism Act (PTA).

Amnesty International welcomes Sri Lanka's reaffirmation of some of the commitments set out in resolution 30/1 during its UPR, including to operationalize the office on missing persons;1 to establish a truth commission,2 an office for reparations and a judicial mechanism with special counsel;3 to review the Prevention of Terrorism Act (PTA),4 in accordance with international law; and to legally recognize the crime of enforced disappearance.5

We are deeply concerned, however, that Sri Lanka has failed to publish a timeline for the implementation of resolution 30/1, and in fact rejected six UPR recommendations calling on it to do so.6 The establishment of a time-bound action plan is vital for victims, survivors and their families in their quest for truth, justice and accountability, and its continued absence sends a very discouraging message to victims and survivors, and the international community, about Sri Lanka's commitment to the full implementation of resolution 30/1.

ENFORCED DISSAPEARANCES

Although Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced Disappearances, the commitment to criminalize enforced disappearances7 is yet to be fulfilled, and a Parliamentary debate on a bill criminalizing enforced disappearance, scheduled for July 2017, was postponed without explanation. During the UPR, Sri Lanka committed to criminalize enforced disappearances in national law8 and to ensure that all allegations of enforced disappearances be impartially and effectively investigated by an independent body.9

An Act to establish an Office on Missing Persons (OMP)10 was passed by Parliament in 2016; however, the office is not yet functioning. The Act permits, but does not require, the OMP to forward information indicating individual

1 Report of the Working Group on the Universal Periodic Review, Sri Lanka, A/HRC/37/17, recommendations 116.63, 116.76, 116.77, 116.79, Sri Lanka's voluntary pledges, para 128.
2 A/HRC/37/17, recommendations 116.77, 116.80, 116.87, 116.88 and Sri Lanka's voluntary pledges, para 128.
3 As above.
4 Sri Lanka's voluntary pledges, para 122.
5 A/HRC/37/17, recommendations 116.62, 116.66.
6 A/HRC/37/17, recommendations 117.37-117.43.
7 Resolution 30/1, op para 13.
8 A/HRC/37/17, recommendations 116.62 and 116.66.
9 A/HRC/37/17, recommendation 116.67.
10 In line with resolution 30/1, op para 4.

criminal responsibility to appropriate authorities for further criminal investigation.11 Amnesty International considers it essential that the OMP does forward such information routinely, or that it preserves it until an independent and effective judicial mechanism is established. During the UPR, Sri Lanka committed to allocate sufficient funds and appoint well-qualified independent commissioners to the OMP.12 However, despite the allocation of a budget and advertising for nomination of members, the OMP is yet to appoint members or to commence operations.

DELAYS AND Lack of progress on emblematic cases

As many as 100,000 families13 are demanding truth on the fate of their loved ones. Since 1980, Amnesty International estimates that there is a backlog of between 60,000-100,000 cases of enforced disappearances in Sri Lanka, including but not limited to Sinhalese youth suspected of leftist links, Tamils suspected of links to the LTTE, journalists and human rights defenders.14

- In the Trinco-5 case,15 in which five students were killed by the security forces in Trincomalee in January 2006, twelve officers were arrested in July 2013. They were released on bail in October the same year.16 A further five years later, there is little sign that a thorough, effective and independent investigation has been conducted into these killings. In early January 2018, Law and Order Minister Sagala Ratnayaka indicated that reforms to allow witnesses overseas to give evidence via Skype would ensure progress the case17. However, Amnesty International is concerned that this measure alone is insufficient to address the flaws to date in the investigations or to convince witnesses that it is safe to engage in the process.18
- Prageeth Ekneligoda, a political cartoonist, was forcibly disappeared on 24 January 2010. In August 2015, the police arrested several suspects in connection with his disappearance;19 however, within months they were granted bail,20 and court proceedings against them are still ongoing.

The families of the disappeared have been protesting for over for over 12 months in Vavuniya, Maruthankerny, Mullathivu, Killinochchi and Trincomalee, demanding information from the government. A number of the protesters were granted a meeting with the President on 12 June 2017; however promises made during this meeting, including to release of a "list of persons who surrendered to the armed forces during the final phase of the war",21 have yet to be fulfilled.

ACCOUNTABILITY, TRUTH, JUSTICE AND REPARATIONS

In resolution 30/1, Sri Lanka committed to establish "a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law".22 During the UPR, Sri Lanka recommitted to establish such a mechanism, with a special counsel.23 However, no progress appears to have been made with regard to its establishment.

Review and repeal of the Prevention of Terrorism Act (PTA)

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11 Section 12(1)

12 A/HRC/37/17, recommendations 116.63-64.

13 https://www.amnesty.org/en/latest/news/2017/04/sri-lanka-victims-of-disappearance-cannot-wait-any-longer-for-justice/

14 https://www.amnesty.org/download/Documents/ASA3754972017ENGLISH.PDF

15 https://www.amnesty.org/en/documents/asa37/013/2006/en/

16 https://www.hrw.org/news/2015/11/22/awaiting-justice-trinco-five

17 In a tweet, Minister Ratnayaka said, "We could not proceed with the case as the main witness was overseas and was not in a position to support proceedings. The case is now progressing as new reforms have allowed the use of Skype evidence."

18 https://www.amnesty.org/en/latest/news/2017/04/sri-lanka-victims-of-disappearance-cannot-wait-any-longer-for-justice/

19 https://www.amnesty.org.nz/can-sri-lanka-turn-page-decade-media-repression

20 https://www.upr-info.org/sites/default/files/document/sri_lanka/session_28_-_november_2017/icj_upr28_lka_e_main.pdf

21 https://www.dgi.gov.lk/news/latest-news/1265-president-meets-family-members-of-missing-persons

22 Resolution 30/1, op para 6.

23 A/HRC/37/17, recommendations 116.77, 116.80, 116.87, 116.88 and Sri Lanka's voluntary pledges, para 128.

Resolution 30/1 welcomed the commitment of the Government of Sri Lanka "to review and repeal" the PTA, and "to replace it with anti-terrorism legislation in accordance with contemporary international best practices".24 Moreover, during its UPR, Sri Lanka committed to review the PTA to bring it in line with international standards.25

More than two years after the adoption of resolution 30/1, the PTA is still being applied. Historically, tens of thousands have been detained under the law, many of them for long periods without charge and enduring torture in custody.26 During a recent visit to Sri Lanka, the Special Rapporteur on counter-terrorism was given official figures for those currently charged with offences under the PTA indicating that "of 81 prisoners currently in the judicial phase of their pre-trial detention, 70 had been in detention without trial for over five years and 12 had been in detention without trial for over 10 years".27 The Special Rapporteur concluded that "use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds".28

Fresh commitments were made by Sri Lanka during its UPR to review the PTA, and to bring it in line with international standards.29

Recommendations

Amnesty International calls on the Human Rights Council to:

- Reiterate its call on the Sri Lankan Government to publish a clear timeline for the full implementation of resolution 30/1;
- Reiterate its commitment to overseeing and supporting Sri Lanka's fulfillment of the commitments made in resolution 30/1, until the provisions are implemented in full.

Amnesty International calls on the Government of Sri Lanka to:

- Provide to the Human Rights Council a time bound schedule for the implementation of commitments under resolution 30/1 and to give full effect to its human rights obligations including those set out in that resolution;
- Appoint immediately the members of the Office on Missing Persons and provide all functional, financial and technical support for the expeditious and independent functioning of that institution;
- Enact legislation criminalizing enforced disappearances and implement the International Convention for the Protection of All Persons from Enforced Disappearances;
- Release immediately a complete list of detainees and those who surrendered;

Review and repeal the Prevention of Terrorism Act (PTA), and to replace it with anti-terrorism.

24 Resolution 30/1, para 12.
25 A/HRC/37/17, recommendation 116.52.
26 https://www.amnesty.org/en/documents/asa37/003/2012/en/
27 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E
28 *Id*
29 A/HRC/37/17, recommendation 116.52.